DEPARTMENT OF STATE REVENUE

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Letter of Findings: 01-20120379
Individual Income Tax
For the Years 2006 through 2010

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Income Tax–Additional Income.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-8.1-5-1; 45 IAC 3.1-1-4; 75 IAC 2-2-11; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); I.R.C. § 61; I.R.C. § 62; I.R.C. § 183.

Taxpayer protests the imposition of additional income tax on receipts from sales of vehicles.

STATEMENT OF FACTS

Taxpayers are married Indiana residents filing joint returns. However, for the purposes of this Letter of Findings, the husband will be referred to as "Taxpayer." Taxpayer purchases vehicles that have various mechanical or cosmetic problems, fixes the problems in order to restore the vehicles, and then sells them. Taxpayer describes the process of restoring the vehicles as a hobby.

Pursuant to a desk audit, the Indiana Department of Revenue ("Department") determined that, during the 2006 through 2010 tax years, Taxpayer failed to report the income derived from the sales of the vehicles. The Department's audit assessed Taxpayer additional income tax, penalty, and interest. Taxpayer protested the assessment. A hearing was held on the matter, and this Letter of Findings results. Additional facts will be provided as necessary.

I. Income Tax–Additional Income.

DISCUSSION

The Department assessed Taxpayer income tax on the value of the vehicles which it sold to customers during the 2006 through 2010 tax years. Taxpayer disagreed with the Department determination that Taxpayer had more income than Taxpayers reported. Taxpayer protested, arguing that restoring and selling vehicles is a hobby and not a side business, that he did not make a profit on the sales of vehicles, and that he is not selling enough vehicles in order to be considered a vehicle dealer.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Adjusted gross income tax is imposed on an individual's adjusted gross income in IC § 6-3-2-1. Pursuant to IC § 6-3-1-3.5, "Adjusted gross income" shall mean an individual's "adjusted gross income" as defined in Section 62 of the Internal Revenue Code with certain enumerated modifications. I.R.C. § 62 defines an individual's "adjusted gross income" as gross income minus certain enumerated deductions. I.R.C. § 61 defines "gross income" as all income from whatever source derived.

The Department of Revenue's desk audit inspected the Taxpayer's account on the BMV's STARs system. The Desk Audit searched for any vehicles titled and registered in the Taxpayer's name dating back to 2006. The Department determined that Taxpayer had sold several vehicles during this time period and that the income from which were not included in Taxpayer's income tax returns. Therefore, the Department determined that Taxpayer underreported his income and made assessments of additional income tax. The best information available ("BIA") assessments were based on the highest number of title transfers in the years reviewed. Since there were eight transfers in 2006, the BIA was based on this year, and this figure was used for 2007, 2008, 2009, and 2010 as well. The BIA assessments were made based upon the authority contained within IC § 6-8.1-5-1(b), which states, "If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available."

Taxpayer acknowledges that he did not keep the receipts, invoices, or other documents for these transactions. However, Taxpayer did provide some information concerning each transfer, and after further investigation, it appears that the figures for 2006 and other years are high. For instance, Taxpayer still owns four of the vehicles from this time period, and some of the transactions that were counted as vehicle transfers were in fact renewals of the registrations of the vehicles that are still owned. Four or five sales are maybe the most that occurred in a given year, and fifteen sales total over the entire period.

With that in mind, Taxpayer still did not report any of the sales of these vehicles on his income tax return. Taxpayer first argues that this was a hobby and not a side business. Regardless of whether Taxpayer was pursuing this as a hobby, "gross income" is income from whatever source derived, so the money Taxpayer made from the sales of these vehicles would still be considered "gross income." I.R.C. § 61. Taxpayer therefore would

still have to report the income received from the sale of the vehicles.

Taxpayer next argues that he never made a profit on the sales of vehicles. Taxpayer argues that he lost money on every sale, because the costs of buying replacement parts added to what he paid for the vehicles was often greater than the amount for which he sold the car. Once his labor is factored into it, Taxpayer's costs become even greater.

If Taxpayer is engaged in a for-profit business, and not a hobby, Taxpayer perhaps would have been able to make certain deductions against his income in determining his federal adjusted gross income. However, Taxpayer asserted at the hearing that he did not keep the receipts, invoices, or other documents when he sold the vehicles or for when he purchased items in order to repair the vehicles.

If Taxpayer's selling of the repaired vehicles is truly a hobby and not a for-profit business, Taxpayer must report the income received from the sale of the cars. Then, IRC § 183 would allow Taxpayer limited deductions for the expenses under federal taxation purposes by taking itemized deductions. However, 45 IAC 3.1-1-4 states:

> Deductions under Internal Revenue Code Subchapter B, Parts VI and VII which are allowable in determining Federal taxable income (itemized deductions) are not allowable deductions in determining Indiana Adjusted Gross Income.

Therefore, Taxpayer's Indiana Adjusted Gross Income for the purposes of assessing the individual income tax would not be different based on any possible allowed deductions for expenses for Federal taxable income.

Furthermore, as stated above, Taxpayer asserted at the hearing that he did not keep the receipts, invoices, or other documents when he sold the vehicles or for when he purchased items in order to repair the vehicles. After the hearing, Taxpayer's representative presented a detailed letter explaining what Taxpayer paid for each vehicle, what Taxpayer sold the vehicle for, and the estimated costs to fix each vehicle. While the letter attempted to close the gap between Taxpayer's reported income and sales figures and those determined by the Department's Desk Audit, neither the Taxpayer nor Taxpayer's representative provided any additional documentation to support the letter.

Taxpayer has the obligation to prepare a careful, methodical, and detailed factual presentation of the evidence sufficient to refute the conclusions of the Department's desk audit. Taxpayer does not meet its burden by presenting an admittedly detailed letter, without invoices, receipts, or other supporting documentation. This letter, without anything more, only serves as a conclusory statement in the hope that it will speak for itself. It does not.

Finally, Taxpayer argues that he does not meet the threshold of a registered Indiana motor vehicle dealer, and therefore was not required to obtain a dealer license. 75 IAC 2-2-11 provides that:

> (a) Dealers and transfer dealers, with the exception of wholesale dealers, financial institutions, and insurance companies, must sell a minimum of twelve (12) vehicles within a twelve (12) month period. For the purpose of determining the number of units sold or anticipated to be sold by a dealer, the licensing year shall be used.
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> (b) A wholesale dealer is subject to the requirement of selling one hundred twenty (120) vehicles within a twelve (12) month period. For the purpose of determining the number of units sold or anticipated to be sold by a wholesale dealer, the licensing year shall be used.

Although Taxpayer would not qualify as an Indiana motor vehicle dealer, being a registered Indiana motor vehicle dealer is not a factor in whether Taxpayer owes additional income tax.

Taxpayer's protest is sustained in part and denied in part. Taxpayer's documentation demonstrated that some of its vehicles should not be included in the list of vehicles sold because he still owns the vehicles. Furthermore, the number of vehicles actually sold is less than the number used to calculate the Best Information Available billing. The Department will recalculate Taxpayer's tax liability in a supplemental audit.

FINDING

Taxpayer's protest is sustained in part subject to the Department's supplemental audit review of the additional documentation. The Department will recalculate Taxpayer's tax liability in a supplemental audit.

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